II. Claims 44-48, allegedly drawn to an antibody, classified in class 530, subclass 387.1.

The Examiner stated that the inventions are distinct, each from the other because of the following reasons. The Examiner stated that Groups I and II are patentably distinct products having different physical and chemical structures and having different uses. The Examiner stated that because these inventions are distinct for the reasons given above and have required a separate status in the art because of their recognized divergent subject matter and different classification, restriction for examination purposes as indicated is proper. The Examiner stated that applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

In response to this restriction requirement, applicant's undersigned attorney, on behalf of applicant, hereby elects, with traverse, to prosecute the invention of Examiner's Group I, i.e. claims 43 and 49, allegedly drawn to a peptide.

Applicant notes that 35 U.S.C. §121 states, in part, that "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." [Emphasis added]. Applicant requests that the restriction of Examiner's Group I from Examiner's Group II be withdrawn in view of the fact that the claims of Examiner's Group I are not independent of Examiner's Group's II. Applicant maintains that the claims of Examiner's Group I and

Examiner's Group II do not define patentably distinct inventions.

Under M.P.E.P. §802.1, "independent" means "there is no disclosed relationship between the subjects disclosed, that is, they are unconnected in design, operation, and effect." The claims of Examiner's Group I, allegedly drawn to a peptide are related to the claims of Examiner's Group II, allegedly drawn to an antibody in that the claims in all groups are related to an isolated peptide encoded by a nucleic acid which is at least 30 nucleotides in length and has a sequence which uniquely defines a herpesvirus associated with Kaposis' sarcoma, which herpesvirus is present in and recoverable from the HBL-6 cell line (ATCC Accession No. CRL 11762). The claims of Examiner's Group I relate to the peptide, while the claims of Examiner's Group II relate the an antibody which binds to such peptide. By knowing a peptide's sequence, one would be able to determine epitopes of the peptide to which the antibody binds.

Applicant therefore respectfully asserts that two or more independent and distinct inventions have not been claimed in the subject application because the groups are not independent under M.P.E.P. §802.01. Therefore, restriction is improper under 35 U.S.C. §121.

Additionally, applicant points out that under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden. There are two criteria for a proper requirement for restriction, namely (1) the invention must be independent and distinct; AND (2)

there must be a serious burden on the Examiner if restriction is not required.

Applicant maintains that there would not be a serious burden on the Examiner if restriction were not required. A search of prior art with regard to Group I, allegedly drawn to a peptide will reveal whether any prior art exists as to an antibody which binds to such peptide. Since there is no burden on the Examiner to examine Groups I-II in the subject application, the Examiner must examine the entire application on the merits.

Applicant maintains that claims 43-49 define a single inventive concept. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement and examine claims 43-49 on the merits.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone either of them at the number provided below.

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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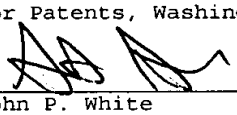
I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.



8-29-01

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